

STATE OF MICHIGAN
COURT OF APPEALS

MARY MCCURRY,

Plaintiff-Appellant,

v

MICHAEL T. GLASPIE and LINDA GLASPIE,¹

Defendants-Appellees.

UNPUBLISHED

June 29, 2001

No. 217425

Oakland Circuit Court

LC No. 96-529085-CH

Before: Markey, P.J., and Jansen and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's opinion and order entered in favor of defendant in this foreclosure action brought under a land contract. We affirm.

On September 13, 1984, plaintiff entered into a land contract with Lawrence and Sharon Brandon (husband and wife) for the sale of certain real property located in the city of Pontiac. The contract provided for a sale price of \$22,578.52, with a down payment of \$3,500, and the balance of \$19,078.52 to be paid in monthly installments of \$200 a month with ten percent interest. On September 10, 1986, the Brandons assigned their interest in the property to defendant as security for a promissory note in the amount of \$6,000. One document specifically states that the assignment was given "for security purposes only for a note." By 1992, defendant failed to pay the monthly installments under the land contract, so the Brandons made the monthly payments to plaintiff. In February 1992, the Brandons filed suit against defendant for breach of contract.

A settlement agreement was subsequently reached on February 1, 1993. Defendant owed \$3,600 to the Brandons, which he agreed to pay by making four monthly installments of \$900 beginning March 1, 1993. Defendant was also to keep current on the land contract payments to plaintiff. Defendant, however, defaulted under the settlement agreement because, although he repaid \$3,600 to the Brandons, he did not keep current on the land contract. The Brandons,

¹ On June 10, 1997, the trial court entered an order dismissing with prejudice the complaint against Linda Glaspie, who is the wife of defendant Michael Glaspie. Linda Glaspie is not a party to the present appeal.

however, also defaulted under the settlement agreement because they failed to execute a quit claim deed that they were required to execute.

Defendant failed to make payments under the land contract in June, July, and August, 1996. On August 6, 1996, plaintiff sent a notice of acceleration to the Brandons and defendant because of the missed payments. Plaintiff claimed an outstanding principal amount of \$9,229.39, plus interest. A title search subsequently conducted by a title company revealed that the property taxes were delinquent for the years 1987, 1988, 1989, 1990, 1991, 1992, 1994, and 1995. The title search further revealed several transactions relating to the property. On January 10, 1992, a state treasurer's deed was recorded for nonredemption at a 1990 tax sale for failure to pay taxes in 1987. A notice of redemption was sent to defendant only stating that the property became state owned on May 7, 1991, because of nonpayment of taxes for 1987. Defendant had until May 13, 1993, to pay all delinquent taxes to redeem the property. On August 9, 1993, the Department of Natural Resources issued a deed to the Golden Eagle. On January 17, 1994, a warranty deed and assignment of seller's interest in a land contract was executed between Golden Eagle and CCB Associates.²

On August 26, 1996, plaintiff and the Brandons filed suit against defendant for foreclosure and breach of contract and requested the balance due of \$9,229.39. The trial court subsequently dismissed the Brandons as plaintiffs because of the prior settlement agreement. Ultimately, the parties agreed to arrive at a set of stipulated facts and both parties presented their trial briefs to the court. On November 10, 1998, following trial on the parties' trial briefs, the trial court found in favor of defendant, essentially ruling that defendant was not legally obligated to pay the property taxes. The trial court also found that the assignment between the Brandons and defendant was not valid because it was not in conformance with the statute of frauds. Therefore, the trial court concluded that there was no privity between plaintiff and defendant and that defendant was not obligated to plaintiff under the land contract. Plaintiff subsequently moved for a new trial or amendment of judgment, but that motion was denied by the trial court in its final order entered on January 21, 1999.

Plaintiff first argues that the trial court erred when it denied her motion for summary disposition on the ground that plaintiff did not redeem title to the property. Plaintiff contends that she had standing to bring the action against defendant because she did not receive notice of the tax lien foreclosure proceeding and, therefore, was entitled to redeem the property. Plaintiff further contends that because of her failure to receive notice of the tax sale, her redemption rights in the property did not expire and she remained the legal title owner to the property. Plaintiff's arguments that she has standing to bring this foreclosure action against defendant and that she remained the legal title owner to the property may be correct, but that does not entitle her to summary disposition.³ These issues were not the bases of the trial court's final judgment and,

² There appear to be subsequent transactions relating to CCB Associates, but those transactions are not clear from the record and are not pertinent to this appeal.

³ We note that the trial court denied plaintiff's motion for summary disposition, ruling that there was a question of fact regarding the title holder to the property because plaintiff had not redeemed her title to the property from the tax sale. Considering the rather complex factual situation surrounding title to the property, as we have set forth, we cannot conclude that the trial

(continued...)

more importantly, are based on a faulty presumption that defendant was obligated to pay the property taxes pursuant to the land contract.

We repeat the pertinent portion of the trial court's ruling here:

The legal issues before the court all relate to the question of who holds title to the subject property. The court has carefully reviewed the documents submitted and finds that the obligation to pay taxes belonged to the Brandons as a result of their Land Contract with Plaintiff. The question is whether Glaspie was obligated to pay the taxes as Plaintiff contends. Although Plaintiff presents three recorded documents purportedly constituting an Assignment of this obligation (and rights) to Glaspie, the court notes that the only document signed by Glaspie is an Assignment "For Security Purposes Only" which clearly states that it was given "for security purposes only for a note of even date herewith between the undersigned assignor and assignee.". . . Thus, the court cannot rely on these documents to establish Glaspie's obligation to pay the taxes. However, there is no indication that Glaspie signed that document either. The court finds that these documents, which involve real property, are not valid because as the Statute of Frauds requires, the obligations are not in a writing signed by both parties. Thus, the court is satisfied that there is no basis on which Glaspie is liable for the payment of taxes. The court would also note that since it finds that the Assignment is not valid, there is no privity between Plaintiff and Glaspie and Glaspie is not obligated to Plaintiff.

The trial court's ruling with regard to the conclusion that the documents created a security interest only in favor of defendant and that defendant was not obligated to pay the property taxes is correct as a matter of law, pursuant to the terms of the documents involved. The documents entered into by the Brandons and defendant clearly state that the Brandons gave defendant an assignment in the property "for security purposes only for a note." Consequently, the documents created a security interest only in the property for defendant. The Brandons remained liable under the land contract to make the monthly installments to plaintiff and the land contract specified that the buyers were responsible to pay the property taxes. As noted above, the Brandons never executed a quit claim deed to defendant, nor did the Brandons ever grant their full interest in the property to defendant. Therefore, the Brandons retained their interest, and obligations, under the land contract.

Plaintiff also argues that the trial court erred in dismissing the Brandons from the lawsuit. Plaintiff, however, does not have standing to raise this issue. The procedural posture of this case is that plaintiff and the Brandons filed suit as co-plaintiffs against defendant. Plaintiff does not have standing to assert the rights of a co-plaintiff because plaintiff does not have a personal stake in asserting the rights of the Brandons. *Wortelboer v Benzie Co*, 212 Mich App 208, 214; 537 NW2d 603 (1995); see also *Kalamazoo v Richland Twp*, 221 Mich App 531, 534; 562 NW2d

(...continued)

court erred in determining that further factual development regarding the legal title holder was necessary.

237 (1997) (a real party in interest is one who is vested with the right of action on a given claim, even though the beneficial interest may be in another).

Plaintiff's next argument is that the trial court erred when it concluded that defendant was not liable under the assignment because the documents did not contain defendant's signature, in accordance with the statute of frauds. MCL 566.106. This issue is not grounds for reversing the trial court's judgment because it was an alternative reason posited by the trial court. The crux of the trial court's ruling was that the assignment between the Brandons and defendant was for security purposes only in securing the note given by defendant to the Brandons. Consequently, the assignment does not create a legal obligation in defendant to pay the property taxes. That obligation remained with the Brandons, the buyers, pursuant to the terms of the land contract. Consequently, assuming that the documents are valid in creating an assignment, the assignment created only a security interest in favor of defendant.

Lastly, plaintiff argues that the trial court abused its discretion when it based its ruling on facts submitted by defendant, which disputed that defendant and the Brandons had executed an assignment, rather than stipulated facts in accordance with the parties' agreement. Although plaintiff's motion for new trial was based in part on her allegation that there were irregularities in the proceeding because the trial court decided the validity of the assignment based on disputed facts rather than on the basis of stipulated facts, this issue does not challenge the trial court's ruling on plaintiff's motion for a new trial. Rather, the issue challenges the trial court's reliance on facts presented in defendant's trial brief and brief in response to plaintiff's trial brief, which implicates the lower court's decision to accept the evidence presented in the briefs. Plaintiff failed to preserve this issue for appellate review because she did not timely object to defendant's presentation of disputed facts or assert that defendant's facts were contrary to the parties' previous agreement to submit stipulated facts. See *Anton v State Farm Mutual Auto Ins Co*, 238 Mich App 673, 688; 607 NW2d 123 (1999).

Affirmed.

/s/ Jane E. Markey
/s/ Kathleen Jansen
/s/ Brian K. Zahra